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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1220

ARMOUR AND COMPANY, AN ILLINOIS CORPORATION,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR,
Respondent

REPLY BRIEF FOR PETITIONER

DONALD R. RICHBERG,
CHARLES J. FAULKNER,
FREDERICK R. BAIRD,
GEORGE E. LEONARD, JR.,
Attorneys for Petitioner.

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The peculiar characteristics of the brief for respondent compel the filing of this reply brief in behalf of petitioner.

The Single Issue Now Presented

It was obviously impossible to argue the merits of a case of this magnitude in petitioner's brief. Counsel for petitioner, in a brief which would comply with the rules, could only explain the issues involved and outline the argument to be made, with the object of demonstrating that this was a case in which a review on writ of certiorari should be granted because of the importance of the questions presented.

Among the reasons officially described (Rule 38) as appealing to the Court's discretion are (1) that a Circuit

Court of Appeals "has decided an important question of federal law which has not been, but should be, settled by this court," and (2) "where the United States Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court."

The present petition seeks a review by this Court of a construction of the Emergency Price Control Act of 1942, as amended, which affects the prices and production of every multi-product industry in the United States. There has been no ruling by the Supreme Court upon the questions presented, or upon the proper construction of the provisions of the statute involved. Exclusive judicial review of administrative construction of the Emergency Price Control Act is given to only one court, the United States Emergency Court of Appeals, whose opinions and decisions can only be reviewed through the grant of a writ of certiorari by the Supreme Court.

We might have reasonably assumed that the Solicitor General would not oppose certiorari in the present case. We can only assume that opposition to a review is based, not on a desire to have the law settled by the Supreme Court, but upon a fear that, on adequate review, the dubious constructions of the law adopted by the Price Administrator, and, with obvious difficulty, sustained by the Emergency Court, would be disapproved by the Supreme Court.

It is worthy of note that the brief in opposition does not advance a single reason to justify the denial of an adequate review of the record of this case. Instead, the brief is devoted to an effort to convince the Court that the decision below should be affirmed. Yet it would be impossible for this Court, on the basis of the limited arguments here permissible, to arrive at a well-grounded decision on the merits

without such a review of the record by the individual justices as would be inappropriate, and indeed impossible, in passing upon the petition for a writ of certiorari. We submit that the immediate question here and now presented is whether the petition should be granted in order that questions of law of vast importance shall be settled by this Court. The question is not as to whether, on the basis of very brief and necessarily incomplete arguments, the judgment below should be affirmed or reversed.

The Issues to Be Presented

As an example of inadequate presentation of important issues, we will call attention to the misconstructions of the federal statute which the brief for respondent seeks to impose upon the Court through self-serving, quotations from the Price Administrator's own statements, and misleading, fragmentary quotations from congressional sources.

Consider, for example, the discussion of the McKellar Amendment (Opposition Brief, pp. 12-15). Counsel for respondent seek to convince the Court that the McKellar Amendment, which commanded the Price Administrator to allow "a generally fair and equitable margin" for the processing of agricultural commodities "including livestock," was a meaningless enactment, and cite an equivocal explanatory statement by Senator Brown (Brief, p. 13) to the effect that "that amendment is in line with the policy already established by the Price Control Act, and I believe it is substantially a restatement of existing law." Anyone familiar with the extensive record involved would know that the McKellar Amendment sprang from bitter opposition to the failure of the Price Administrator to allow a fair and equitable margin for processing. Anyone familiar with this record would know that the denaturing of the McKellar Amendment by an administrative construction, approved by the Emergency Court, has been the subject of bitter

condemnation by members of Congress voiced repeatedly in congressional hearings. Yet, counsel for respondent are willing to have this Court misled in the limited consideration which can be given to a petition for certiorari, and are willing to ask this Court to refuse to review a misconstruction of the law, on the strength of assertions which counsel well know would be vigorously challenged in an adequate review of this case.

Indeed, while the brief for respondent was being written, the Committee on Agriculture of the United States Senate was making an interim report criticizing severely the administration of the law by the Price Administrator in regulating meat prices, which report included the following statements:

> "The committee are convinced from the testimony that at the present time substantial losses are being incurred by processors on both beef and pork operations. Many small packers have been forced to close, curtail their operations, go broke, or go 'black,' because of their inability to continue to take these losses. The Office of Price Administration officials have assured this committee from time to time that they would correct these inequities administratively. In the case of pork an announcement was made which purported to make pork operations profitable. The Office of Price Administration has since admitted that such relief was inadequate. Later they announced their 10-point program for beef which they said made beef operations profitable. Testimony produced before this committee clearly established that this program causes packers greater losses than they were sustaining under the program it superseded. This committee believe processors should have a margin of profit for processing of each species of livestock. In view of the recent court decisions, Congress must amend the Emergency Price Control Act so that it will be *unmistakably* construed in that manner. This committee, therefore, recommend that the Banking and Currency Committee of the Sen-

ate, which now has before it a bill to extend the Price Control Act, incorporate in that bill an amendment that will accomplish this result." (Italics ours.) (79th Congress, 1st Session, Senate Report No. 270.)

Also during the writing of the brief for respondent, the Special Committee to Investigate Food Shortages for the House of Representatives made a report which included findings that "legitimate slaughterers operate at a loss when buying their livestock at ceilings. The Office of Price Administration admits this." The committee report also states:

> "In conclusion the committee wishes to emphasize its belief that the greatest mistake made in the control of meat prices was to begin by pricing at the retail level and then working backward."

(The arbitrary, illegal character of this procedure is one of the very questions involved in the present case.)

The committee included in its recommendations the following:

> "3. Fair and equitable margins should be established in every operation of the production, processing, and distribution of meat with special incentives for feeders of cattle to produce better and heavier beef, due consideration being given to the over-all feed situation." (79th Congress, 1st Session, House Report No. 504.)

Our only purpose in citing the foregoing reports is to show, first, how impossible it would be for this Court, upon a meager consideration of the briefs in support and in opposition to the petition to arrive at the conclusion sought by counsel for respondent that "the decision below is correct and does not warrant further review," and, second, that the questions presented, involving the construction and administration of the Emergency Price Control Act, are of such extraordinary public importance that they are the sub-

ject of discussion in practically every home in America, and are absorbing daily the attention of the Congress of the United States. Many bitterly-debated questions as to the proper construction and administration of this far-reaching federal statute are clearly presented for determination by the Supreme Court for the first time in the record of the present case. We submit that it would be difficult to present a case in which the grant of a petition for a writ of certiorari would be more urgently called for than in the present instance.

Respectfully submitted,

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Dated: May 25, 1945.